

FILED

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

2003 MAR 25 A 10:49

CLERK OF THE
BANKRUPTCY COURT
OF NH

In re *

Robert K. Mariano *

Bk. No. 02-11486-JMD

Chapter 13

Hearing: April 24, 2003

10:00 a.m.

Debtor *

**MOTION FOR AUTHORITY TO SELL REAL ESTATE FREE AND CLEAR
OF LIENS AND OTHER INTERESTS**

The debtor in the above-entitled matter, Robert K. Mariano, hereby moves, in accordance with Bankruptcy Code §363(b)(1) and (f), 503(b) and 506(c) and Bankruptcy Rules 6004(c) and 2002(a)(2) and (c), for authority to sell his interest in a certain piece of real estate described below free and clear of liens and other interests, and to pay certain expenses related to this sale. In support hereof, the debtor states as follows:

1. The debtor proposes to sell at private sale his interest in his residential real estate at 64 Cota Road, Merrimack, New Hampshire, for the price of \$200,000.00 to Kevin D. Tracy and Melisa D. Tracy of 5 Aspen Lane, Merrimack, New Hampshire. The further terms and conditions of this sale are set forth in the Sales Agreement and Deposit Receipt dated March 12, 2003, attached as Exhibit 1 hereto.

2. The aforesaid real estate is encumbered by the following liens and interests:

First mortgage in favor of GMAC Mortgage Corp. c/o Harmon

Law Offices, P.O. Box 610389, Newton Highlands, MA 02461-0389 in the amount of \$98,199.96 as of January 31, 2003.

3. Upon sale as authorized by the bankruptcy court, the aforesaid liens shall attach to the proceeds of the sale in the order of their existing priority, except that there shall be paid from these proceeds (a) a real estate commission in the amount of \$12,000.00 due to ReMax Synergy, LLC, for bringing about this sale as authorized by an appropriate order of the bankruptcy court for the employment and payment of compensation to the aforesaid ReMax Synergy, LLC, and (b) fees and closing costs for preparation and recording of the deed and lien discharges, legal fees and expenses for obtaining bankruptcy court approval of the employment of the real estate broker and of this sale, real estate transfer taxes, proration of current real estate taxes, water, sewer and utility charges, rents and rent deposits (if any).

4. Objections to the granting of this motion for authority to sell free and clear of liens and other interests must be filed with the bankruptcy court, with a copy to undersigned counsel, on or before April 17, 2003. A hearing on the motion for authority to sell shall be held at the U.S. Bankruptcy Court, 4th Floor, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire, on April 24, 2003, at 10:00 a.m.

Respectfully submitted,
ROBERT K. MARIANO,
By His Attorneys,
Gray Wendell & Clark P.C.

March 24, 2003

By: 

Grenville Clark III
BNH01158
650 Elm Street
Manchester, NH 03101
603-625-4100

CERTIFICATION

I hereby certify that a copy of the foregoing has been forwarded this 24th day of March, 2003, via first class mail, postage prepaid, to the creditors listed on Exhibit A attached hereto, and to the following:

Lawrence P. Sumski, Esq., Trustte
294 Route 101
Amherst, NH 03031

Deirdre M. Keady, Esq.
Harmon Law Offices P.C.
P.O. Box 610389
Newton Highlands, MA 02461-0389

U.S. Trustee
66 Hanover Street
Manchester, NH 03101


Grenville Clark III

EXHIBIT A

First North American National Bank
P.O. Box 42395
Richmond, VA 23286-5689

Resurgent Capital Services
P.O. Box 10587
Greenville, SC 29603-0587

The Berlin City Bank
P.O. Box 9
Berlin, NH 03570

Verizon
1 Greene St., Floor 6
Providence, RI 02903

PSNH
P.O. Box 330
Manchester, NH 03105

Citizens Bank
P.O. 9665
Providence, RI 02940-9665

**STANDARD FORM
PURCHASE AND SALE AGREEMENT**

1. PARTIES AND MAILING ADDRESSES (fill in)
- THIS AGREEMENT made this 12th day of March, 2003
- Between
The SELLER Robert K. and Christine M. Mariano
of 64 Cota Road City Merrimack State NH Zip 03054
and
The BUYER Kevin D. and Melisa D. Tracy
of 5 Aspen Lane City Merrimack State NH Zip 03054
2. DESCRIPTION (fill in and include title reference)
- WITNESSETH: That the SELLER agrees to sell and convey, and the BUYER agrees to buy certain real estate located in Merrimack, New Hampshire known as or described as a three bedroom, 1 bath single family home located at 64 Cota Road on approximately 0.4 acres serviced by public water and sewer.
- County Hillsborough Book 3121 Page 579 Date _____
3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES (fill in if applicable)
- Included in the sale as part of said premises are the buildings, structures, and improvements now thereon, and the fixtures belonging to the SELLER and used in connection therewith including, if any, Dishwasher,
gas stove, washer, dryer, all light fixtures
- Items to be transferred to the BUYER in "as is" condition and not to be considered part of the sale are (if none, state "none") none
- Not Included in the sale as part of the premises are the following items: (if none, state "none") none
4. PURCHASE PRICE (fill in)
- The PURCHASE PRICE is _____ Dollars \$200,000.00
Deposit, receipt of which is hereby acknowledged in the form of a personal cheque to be held in an escrow account by Re/Max Synergy, Escrow Agent, in the sum of \$ 1,000.00
Additional deposit will be paid on or before 30 March, 2003 \$ 4,000.00
CASH, CERTIFIED CHECK or BANK DRAFT on date of transfer of title in the sum of _____ \$ 195,000.00
5. TITLE DEED (fill in)
- DEED: Marketable or Insurable Title shall be conveyed by a warranty deed, and shall be free and clear of all encumbrances except usual public utilities serving the property and restrictive covenants of records.
6. TIME FOR PERFORMANCE: DELIVERY OF DEED (fill in)
- TRANSFER OF TITLE: On or before 1 May, 2003 at Attorney's office, Registry of Deeds, Lending institutions, or some other place of mutual consent. _____
TITLE: If BUYER desires an examination of title he shall pay the cost thereof. If upon examination of title it is found that the title is not marketable or insurable, at the BUYER'S option this agreement shall become void and the SELLER hereby authorizes the Escrow Agent to return BUYER'S deposit in full without recourse to the parties hereto.
7. INSURANCE (insert amount)
- INSURANCE: The buildings on said premises shall, until the full performance of this agreement, be kept insured against Fire, with Extended Coverage by the SELLER. In case of loss, all sums recoverable from said insurance shall be paid or assigned, on delivery of deed, to the BUYER, unless the premises shall previously have been restored to their former condition by the SELLER; or, at the option of the BUYER, this agreement may be rescinded and SELLER hereby authorizes Escrow Agent to return the BUYER'S deposit in full without recourse to the parties hereto if loss exceeds \$5,000.00. The SELLER shall provide evidence of current insurance coverage to the BUYER upon written request.
8. POSSESSION AND CONDITION OF PREMISES (fill in)
- Full possession of the premises, free of all tenants and occupants, except the tenants as provided herein below, is to be delivered to the BUYER on or before date of closing, the said premises to be then in the same condition in which they now are, reasonable wear and tear excepted.
The SELLER also agrees that the premises will be delivered to the BUYER in "broom clean" condition. The BUYER shall have the right to inspect the premises for compliance with this paragraph prior to delivery of the DEED upon reasonable notice to the Broker.
EXCEPTIONS: none
9. ADJUSTMENTS (fill in)
- Special assessments, taxes, rents, condominium fee, water, sewage bills and fuel in storage shall be prorated as of none

MMT
BUYER'S initials
MTZ
BUYER'S initials

RM
SELLER'S initials
CHM
SELLER'S initials

10. AGENCY
DISCLOSURE

BUYER(S) and SELLER(S) acknowledge and understand that Re/Max Synergy / Thomas Beauchemin
LISTING AGENCY represents the SELLER, and Coldwell Banker Res. Brokerage/Sally Hooper SELLING AGENCY
is acting as ☐ SUBAGENT or AGENT representing the SELLER ☒ BUYER'S AGENT representing the BUYER
☐ DISCLOSED DUAL AGENT ☐ Another relationship, in this transaction.

11. BUYER'S DEFAULT

If the BUYER shall default in the performance of his obligations under this agreement, the amount of the deposit may, at the option of the SELLER, become the property of the SELLER as reasonable liquidated damages, which shall be the SELLER'S sole remedy in law and in equity.

In the event of any dispute relative to the deposit monies held in escrow, the Escrow Agent may, in its sole discretion, pay said monies into the Clerk of Court of proper jurisdiction in an Action of Interpleader, providing each party with notice thereof, at the address recited herein, and thereupon the Escrow Agent shall be discharged from its obligations as recited therein, and each party to this Agreement shall thereafter hold the Escrow Agent harmless in such capacity. Both parties hereto agree that the Escrow Agent may deduct the cost of bringing such Interpleader action from the deposit monies held in escrow prior to the forwarding of same to the Clerk of such Court.

12. MORTGAGE
CONTINGENCY
CLAUSE
(fill in)

FINANCING: This Agreement is contingent upon BUYER(S) obtaining under the following terms:

AMOUNT \$ 100% TERMS/YEARS 30 years RATE current

TYPE OF MORTGAGE Conventional/FHA

Application for mortgage must be made on or before 24 March, 2003, failing which this contingency shall be deemed to have been waived. On or before 14 April, 2003, BUYER(S) shall provide SELLER or SELLER'S agent with written evidence, as to BUYER'S ability or inability to obtain financing. TIME BEING OF THE ESSENCE. Upon such notification, if the BUYER(S), having used all due diligence, is unable to obtain financing, this Agreement shall become null and void and SELLER hereby authorizes Escrow Agent to return BUYER'S deposit in full without recourse to the parties hereto. In the event BUYER(S) fails to comply with such written notification, the financing contingency shall lapse or, at the SELLER'S option, this Agreement shall become void and the SELLER hereby authorizes the Escrow Agent to return BUYER'S deposit in full without recourse to the parties hereto.

13. DISCLOSURES

In compliance with the requirements of RSA 477:4-a, the following information is provided to the BUYER relative to Radon Gas and Lead Paint:

RADON GAS: RADON GAS, the product of decay of radioactive materials in rock may be found in some areas of New Hampshire. This gas may pass into a structure through the ground or through water from a deep well - testing can establish its presence and equipment is available to remove it from the air or water.

LEAD PAINT: Before 1978, paint containing lead may have been used in structures. The presence of flaking lead paint can present a serious health hazard, especially to your children and pregnant women. Tests are available to determine whether lead is present.

HAZARDOUS WASTE: The EPA (Environmental Protection Agency) has identified certain hazardous waste sites within this area. Information concerning these sites and other possible sites may be obtained by contacting the following offices: EPA-Concord, NH (603) 271-3503 EPA-Boston, MA (617) 565-3420

14. INSPECTION
(fill in and initial)

The BUYER(S) are encouraged to seek information from professionals regarding any specific issue or concern.

This Agreement is subject to home inspection(s) by a qualified person(s) normally engaged in the business of conducting such inspections, at BUYER'S expense, on or before 28 March, 2003

showing the building to be free of major structural flaws and/or major defects and that its systems (including plumbing or heating or electrical, etc.) are fully operable.

BUYER(S) TO INITIAL ADDITIONAL ITEMS TO BE INSPECTED (AT BUYER'S EXPENSE)

WATER _____ (Initial)	SEPTIC/SEWER SYSTEMS _____ (Initials)
RADON _____ (Initial)	INSECT INFESTATION _____ (Initials)
OTHER DESCRIPTION _____	_____ (Initial)

If the BUYER fails to notify Re/Max Synergy, Agent of the SELLER, in writing that the inspection results are unacceptable, together with a copy of inspection, on or before 7 April, 2003, this condition shall be waived and the Agreement shall continue without this condition and without liability to SELLER or SELLER'S Agent. Upon receipt of BUYER'S request for remedial action, SELLER must respond within five days. In the event major structural flaws and/or major defects are found, they will be corrected at the SELLER'S expense if BUYER and SELLER both agree, otherwise this Agreement shall become null and void and SELLER hereby authorizes Escrow Agent to return BUYER'S deposit in full without recourse to the parties hereto.

OR

I/We do not wish to have an inspection of the property and hereby waive the option as stated above.

(BUYER'S initials)

MMT
BUYER'S initials

[Signature]
SELLER'S initials

[Signature]
BUYER'S initials

CHH
SELLER'S initials

15. LEAD-BASED
PAINT TESTING
(Pre 1978 Housing)
(fill in if applicable
and initial)

This agreement is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards * at the BUYER'S expense until 9:00 P.M. on the tenth calendar day or mutually agreed upon date of _____ after ratification.

This contingency will terminate at the above predetermined deadline unless the BUYER (or BUYER'S agent) delivers to the SELLER (or SELLER'S agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The SELLER may, at the SELLER'S option within _____ days after delivery of the addendum, elect in writing whether to correct the condition(s) prior to Settlement. If the SELLER will correct the condition, the SELLER shall furnish the BUYER with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the SELLER does not elect to make the repairs, or if the SELLER makes a counter-offer, the BUYER shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this agreement shall become void. The BUYER may remove this contingency at any time without cause.

*Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information.

OR

BUYER waives the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards. _____ (BUYER'S initials)

16. ATTACHMENTS

The following attached disclosures become an integral part of this agreement.

1. Sellers Representation of Property 2. Lead-Based Paint Disclosure (if applicable)

17. ACKNOWLEDGMENT

All representations, statements, and agreements heretofore made between the parties and merged in this agreement which alone fully and completely expresses their respective obligations, and this agreement is entered into by each party after opportunity for investigation, neither party relying on any statements or representations not embodied in this agreement, made by the other or on his behalf.

BUYER acknowledges that: information was supplied by the SELLER and has not been checked for accuracy by the Agent(s); public information was subject to BUYER'S verification at local town offices and/or law enforcement agency; each item was subject to direct inquiry by the BUYER, and the BUYER has been so advised; and the Agent(s) makes no representations regarding the property, the neighborhood, and the condition of the premises, structure(s) thereon or the mechanical components thereof.

18. ADDENDUM(S) TO
AGREEMENT:
(fill in)

Attached addendum(s) are incorporated and become an integral part of this agreement. (if none, state "none").
None.

19. ADDITIONAL
PROVISIONS
(fill in)
(if none, state "none")

Faxed signatures will serve as originals for the purpose of this contract.
Subject to Buyers home at 5 Aspen Lane, Merrimack, NH closing on or before 1 May, 2003, with receipt of funds from
said sale.
This contract is subject to Bankruptcy Court approval.

NOTICE: THIS IS A LEGAL DOCUMENT THAT CREATES CERTAIN BINDING OBLIGATIONS. IF YOU DO NOT UNDERSTAND IT, CONTACT AN ATTORNEY BEFORE SIGNING. This agreement shall be binding upon the heirs, executors, administrators and assigns of both parties.

I HAVE READ AND UNDERSTAND THIS DOCUMENT.

Witness	Date	Buyer	<u>[Signature]</u>	Date	<u>3-21-03</u>	Soc. Sec. or Fed. I.D.
Witness	Date	Buyer	<u>[Signature]</u>	Date	<u>3-21-03</u>	Soc. Sec. or Fed. I.D.
Witness	Date	Seller	<u>[Signature]</u>	Date	<u>3/20/03</u>	Soc. Sec. or Fed. I.D.
Witness	Date	Seller	<u>[Signature]</u>	Date	<u>3/20/03</u>	Soc. Sec. or Fed. I.D.